IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9596 of 2005

Between:

The Nizam Club, Saifabad, Hyderabad, rep., by its Secretary.

..... PETITIONER

AND

1 Employees State Insurance Corporation, 5-9-23, Hill Fort Road, Hyderabad, rep. by its Regional Director.
2 The Recovery Officer, E.S.I.Corporation, Hill Fort Road, Hyderabad.
3 The Nizam Club Staff and Workers Union, House of Labour, Kind Koti Road, Hyderabad-29, rep., by its General Secretary.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction particularly one in the nature of WRIT OF MANDAMUS declaring the impugned order 14-02-2005 made in I.A.NO.69 of 2004 in E.I.C.SR. No.2711 of 2003 by the ESI Court-cum-Industrial tribunal-I, Hyderabad as arbitrary, unjust, and in violation of Art.14 & 21 of the Constitution of India and also in violation of principles of natural justice and grant the relief as prayed in I.A.No.69 of 2004 in EIC Sr.No.2711 of 2003 in the interest of justice and fair play.

Counsel for the Petitioner : MR. V.NARASIMHA GOUD

Counsel for the Respondents : MR. WILLIAM BURRA

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.9596 OF 2005

ORDER :

Heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondents 1 and 2.

This writ petition is filed seeking a Writ of Mandamus declaring the impugned order dated 14-02-2005 in I.A.No.69 of 2004 in E.I.C.SR.No.2711 of 2003 on the file of ESI Court-cum-Industrial Tribunal-I, Hyderabad as arbitrary and illegal.

As can be seen from the material on record, the 1st respondent Corporation passed an order dated 5-5-2003 determining that a sum of Rs.19,51,950/- is payable by the petitioner towards the contributions under the Employees State Insurance Act, 1948

(for short, 'the Act'). Aggrieved by the same, the writ petitioner preferred an appeal before the Court of ESI Court-cum-Industrial Tribunal-I, Hyderabad. Alongwith the said Appeal, the petitioner filed an application under Section 75(2-B) of the Act with a prayer to waive or reduce the conditions of deposit of 50% of the contribution amount as claimed by ESI Corporation under the proceedings dated 5-5-2003.

The said application was dismissed by the Tribunal by order dated 14-2-2005 stating that there are no valid reasons either to waive or reduce the deposit to be made which is order is under challenge in this writ petition.

The learned Counsel for the petitioner vehemently contends that having regard to the facts and circumstances of the case, the Tribunal below ought to have reduced the deposit to be made in exercise of jurisdiction under Section 75 (2-B) of the Act. The leaned Counsel also submits that as a matter of fact the Tribunal has been invariably reducing the deposit to be made in almost all the Appeals and therefore there is no reason in not exercising the similar discretion in favour of the petitioner.

I do not find force in the contention of the learned Counsel for the petitioner.

Under Section 75-2B of the Employees State Insurance Act, 1948, no matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation. It is true that under the proviso the Tribunal is empowered, for reasons to be recorded in writing, either to waive or reduce the amount to be deposited at any stage. However, it cannot be said that it is mandatory for the Tribunal to reduce the amount required to be deposited in all the cases.

A perusal of the impugned order shows that the Tribunal below having considered the facts and circumstances of the case on hand concluded that there

are no valid reasons either to waive or reduce the amount to be deposited. I do not find any justifiable reason to interfere with such a discretionary order made by the Tribunal below. On a careful consideration of the entire material on record, I am unable to hold that the said order is without application of mind to the relevant factors, nor it cannot be termed as perverse.

The impugned order does not suffer from any infirmity and therefore the interference of this Court under Article 226 of the Constitution of India is not warranted.

However, the learned Counsel for the petitioner states that since the petitioner has already deposited Rs.6 lakhs, the time for depositing the balance may be extended. The learned Counsel appearing for the respondents does not oppose the same. Accordingly, the petitioner is permitted to pay the balance within two weeks from today.

Subject to the above, the Writ Petition is dismissed. No costs.

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27th April, 2005.

gbs

To

1 The Regional Director, Employees State Insurance Corporation, 5-9-23, Hill Fort Road, Hyderabad,rep. by its Regional Director.
2 The Recovery Officer, E.S.I.Corporation, Hill Fort Road, Hyderabad.
3 The General Secretary, Nizam Club Staff and Workers Union, House of Labour, Kind Koti Road, Hyderabad-29.

4. Two CD copies.